

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

Civil Action No. 4:11-CV-00094-BO

BRUCE BANNISTER; MAX DUTTON;
and MARION TOWLES;

Towles,

vs.

WAL-MART STORES EAST, L.P.,

Defendant.

**APPENDIX TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT REGARDING MAX
DUTTON'S CLAIMS**

H-1

Declaration of Noah Johnson Exhibit 1

M. Dutton's Statements and A. Binder's Interview Summary (7/16/2009)

Message

From: Art Binder [/O=WAL-MART/OU=HOMEOFFICE/CN=RECIPIENTS/CN=0480A096013C11D5B135002035673F01]
Sent: 7/16/2009 1:00:09 PM
To: Noah Johnson [noah.johnson@wal-mart.com]
Subject: FW: ScanSend
Attachments: document2009-07-15-033505.pdf

His statements.

Art Binder
Regional Asset Protection Director
8701 Red Oak Blvd. Suite 200
Charlotte, NC 28217
704-529-3607 Office
479-640-2557 Cell

-----Original Message-----

From: \$u@wal-mart.com [mailto:\$u@wal-mart.com]
Sent: Wednesday, July 15, 2009 3:35 AM
To: Art Binder
Subject: ScanSend

Wal-Mart Stores, Inc., Confidential

07/14/2009

I Max Dutton would like to summarize some facts pertaining to my visit with Mr. Art Binder.

For the past eleven years Art Glidden has been involved in CMN fundraisers throughout our community. My past district managers or market managers knew Art to be a fine citizen donating his time to help Childrens hospital of the Kings Daughters and when not involved with CMN he is involved with the fire department etc; raising money for the Joy Fund. (Helping children and families)

One day on a email and then conference call each store was given the amount of \$7500.00 to be raised for CMN. We were told to do whatever it takes, be creative, jean day etc; we had a bake sale, cookouts, donation raffle, ask customers at the register for donations, had two days of beach dress up day \$5.00 per associate, the associates charged me \$20.00, one morning at a morning meeting it was brought up if we could put a sign up for truck drivers or anyone coming in the back if they would like to donate to CMN.

A man named Charlie Lipsey with George Marshall and associates was in the store and put money in our incubator and mentioned to some associates and myself that when his son was an infant he had a brain tumor and how childrens hospital had help him. He mentioned he was compelled to do more, he stated I'm going to do more, he sent a check to the store in the amount of \$500.00 to be placed in the incubator.

When other vendors, example Coopertone(a girl named Melissa I think) saw at the register what we were doing and said they needed to get involved we discouraged this. Mr. Lipsey's story of his son and his wish of the check, we felt compelled to honor his wishes.

A handwritten signature in black ink, appearing to read "Max Dutton". The signature is fluid and cursive, with a long horizontal stroke at the end.

July 14, 2009

Art,

After contemplating and re-reading my statement of earlier today, I have had a chance to really put my thoughts together. Your visit came as a surprise and even though the events in my statement are true, I would like to opportunity to thoughtfully add more comments.

As you know, funding raising through Wal-Mart for Children's Miracle Network (CMN), more specifically the Children's Hospital of the Kings Daughter (CHKD), is a belief of Sam Walton and his family. Wal-mart is committed to this endeavor.

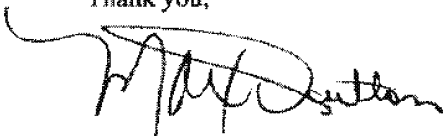
For the past eleven years, Art Glidden has been involved in CMN fundraisers periodically throughout our community. My past district managers and/or market managers knew Art to be a fine citizen donating his time to help the CHKD. When not involved with CMN, he is involved with the fire department and other community organizations raising money for the Joy Fund. The Joy Fund is a community organization which helps needy children and families. He has received the Governor's Award for volunteerism in NC. Art was persistent in his requests to volunteer at the store to raise money for CMN. He has recently been discharged from the local nursing home and wanted to get back involved.

In an earlier email followed by a conference call, each store was directed to raise \$7,500.00 for CMN. I don't recall the date of this email and conference call, but can find it if so desired. We were told to "do whatever it takes, be creative." Our store participated in many events such as beach dress up day asking associates to donate \$5.00, I was asked to donate \$20.00, bake sales, cookouts, donation raffles, and asking customers at the register for donations, plus many, many other events. During a morning meeting, the associates asked if they could put up a sign asking the truck drivers or anyone coming in the back if they would be willing to donate to CMN. Charlie Lipsey from George Marshall and Associates (a local vendor) was in the store and put money in our incubator for CMN. He mentioned to some associates and myself that his son had a brain tumor when he was an infant and how the children's hospital had helped him and his family. He said he "felt compelled to do more" and sent the store a check in the amount of \$500.00 made out to CMN to be placed in the incubator. I have his contact information for you to verify if necessary.

Other vendors, seeing what we were doing raising money for CMN, wanted to get involved. For example, Coppertone and Frito Lay both expressed their interest in donating to this cause. We discouraged these donations from vendors due to the possibility of it being deemed incorrect and looking at it as being a forced donation to benefit the vendor. Charlie Lipsey had a personal experience and was making the donation as a heartfelt, genuine contribution.

If you have any questions or concerns regarding my involvement with Wal-mart or fundraising for CMN, please know that you can contact me at any time.

Thank you,



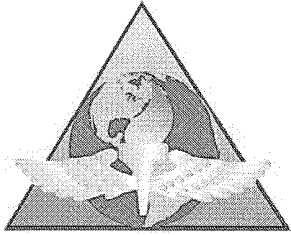
Max Dutton
252-261-6601 (Store)
252-216-6686 (Cell)
252-441-5119 (Home)
mdutton2000@walmart.com
maxd@daresc.com

MAX,

Tammy Nichols won the \$500⁰⁰ gift card. She wants to Donate it to Childrens Hospital... Please call her @ **Redacted**

Thanks, Sammy

Notified 6/26/09 4pm By Kim Grant To come in & pick up gift card. Explained how much we appreciate the generosity of donating it ~~back~~ to CMW. *[Signature]*



WAL★MART STORES, INC.

Art Binder
Regional Asset Protection Director
8701 Red Oak Blvd.
Charlotte, NC 28217
Phone (704) 529-3607
Fax (704) 529-3650

To: David Carmon RVP for Region 48
Melody Fogarty RHRD for Region 48
Date: July 15, 2009
CC:
Re: Max Dutton Investigation

On July 14, 2009, I arrived at store 2000, Kitty Hawk, NC and was greeted at the front door by Max Dutton. I explained to Max that I needed some time to discuss the investigation being conducted in his store around the CMN fund raiser. Max said he would make himself available for whatever time was needed. Max offered the use of his office.

During the on-set, I explained to Max that I was there to bring clarification to two different issues, the first would be whether or not the Ethics Policy of the company had been violated and second, whether or not we have a labor violation dealing with a person by the name of Art Glidden. The discussion of Art Glidden was discussed first and Max made the following statements:

- Max stated that Art Glidden had worked with Max for 16 total years at the store and 13 of those years while Max held the title of Store Manager.
- Max said that Art Glidden worked with him this past fund raiser for CMN for about 14 days for a time of 4 hours a day. **This is disputed by Art Glidden since he says he worked two weeks for 8 hours a day.**
- When asked if Art Glidden was picked up and dropped off by associates in the store, Max said that it was true that they did that from time to time since Art was in a retirement home but Max believes that he is not in the retirement home now but may be back in his own home.
- When asked if Art Glidden was dressed like a Wal-Mart associate, Max said yes with the following explanation. Max explained that Art Glidden would look run downed and un-kept on occasion so he has asked him to dress more like the other associates that have on blue and khaki and then someone suggested to make a name badge for him so he allowed that to take place. Max said with him sitting up front at a table in the store that he needed to look like other associates. Max lead me to believe that someone higher than him was the one to say put a name badge on him however, he could not give a name.
- When Max was asked if Art Glidden was ever paid for a fund raiser, Max said no.

A Department Manager by the name of Diane Harris strongly disagrees with this statement and reports that she was told by Max Dutton that he had contacted legal and was told that he had the right to disburse funds anyway he chooses. Diane had just finished doing a bake sale fund raiser for a needy family with Art Glidden where a thousand dollars was raised. Art asked Diane how much was raised and she told him one thousand dollars. Art then told Diane that Max had told him that he could have half of the money raised. Diane said that a matching

grant was applied for and received and that the family received one thousand dollars as well as Art Glidden receiving one thousand dollars. Diane stated that Assistant Manager Sammy was present when Max told her about how he could disburse the funds according to information from legal.

***** I did not have this information from Diane at the time of the interview so I did not know to ask Max or Sammy. Today 7/15/09, Melody Fogarty and I called Sammy and Sammy said that conversation did not take place.

- When asked if Max found it suspect that a person who works at the restaurant that Art Glidden was associated with was the winner of the \$500.00 shopping spree and that no-one knows how the winning ticket was drawn, Max said it sounds very suspect and that to his knowledge no-one does know how the ticket was drawn. Max went on to say that Art is no longer associated with the restaurant but he does agree that the circumstances are suspect in nature.

The importance here is the restaurant is named Art's Restaurant and is owned by the person who Art Glidden reported as the winner of the shopping spree drawing. The same person is also described as the care-taker for Art Glidden.

- Max stated that he was informed by Assistant Manager Sammy that the person who won the ticket had asked that the money be given to CMN and as of this date has not picked up the shopping card although the store has informed her on 6/26/09 that if she wished to donate the money to CMN that she needs to directly do the donation and that the store can not. The gift card remains at the store.

Assistant Manager Sammy was asked about the drawing and the winner, and he said that he was approached by Art Glidden and told that the winner of the drawing was Tammy Nichols who is the owner of Art's Restaurant. Sammy said he "believes" that Art gave him a winning ticket and that he "believes" that he handed it in to the cash office at the same time it was given to him. Video recordings do not show that information to be factual. Sammy appeared to be confused to facts when I was speaking to him and that is why he kept using the term "believe". Sammy said that in the past they had always made an announcement before any drawing to get a crowd to gather and then have a small child draw the winning ticket, however Sammy said that was not the case this time and has no idea who drew the winning ticket. Art Glidden was asked and he said it was a child and could not offer any further information. The area of the drawing was not covered by video so no verification could take place.

- Max stated that some of the people who supervised him in the past knew of Art Glidden as a person who assisted in fund raiser. Max gave the following names as people who may know about Art Glidden as a fine citizen who donated his time to raise money for CMN:
 1. Tim Jackson (past MM)
 2. George Joiner (present MM)
 3. Chris Mehler (present MM)
 4. Wayne Lewis (present MM)

The next portion deals with any Ethical Violation that may have occurred during the Fund Raiser:

Information was furnished from different associates that the CMN fund raiser at store 2000, Kitty Hawk was handled improperly and violated ethical standards because vendors were involved in donating money to the fund raiser. During the course of Tracey Battles investigation, she obtained a "flyer" that was being distributed to vendors that solicited fund and ask the checks be made payable to CMN/Wal-Mart. The following information was furnished by Max in reference to the way the fund raiser was handled:

- Max said he and the other Store Managers were given an amount of \$7500.00 to raise for CMN. Max said Eric Litchfield instructed the stores to do what it took to raise the money, and to be creative. Max said someone suggested to do a jean day and Eric again said to do what it takes and be involved to raise the money.
- When Max was shown a copy of the flyer that was obtained from his store, Max said he "probably mentioned to show this to the vendors as a suggestion to donate". Max said he thought that Teresa in invoicing had made the flyer and that he recalls conversation to show it to the vendors. Max went on to say that he guesses that "we just started asking everyone to donate". Max then said that he had never really read the flyer until I showed it to him.
- I went into the WIRE and pulled up the Ethics Policy for the company and went to the section where it states that no store can solicit vendors to donate to any charitable organization and showed it to Max. Max said well we were under pressure to raise the money and the quickest way was for the vendors to give.

When writing his own statement, Max down played the flyer to the point of saying it was more for the truck drivers and anyone who entered the back door.

- Max was asked if he knew of any vendors who gave a check and he said that a check had been put into the CMN account that should had been placed into the incubator that was from a vendor.

Max was speaking of a check from a company by the name of George Marshall that does beach merchandise business with the store. Max went to the cash office after he learned of the investigation and asked the associate in the office if HR and AP, (Tracey and Dawana) had asked about the check and he was told they had. Max then said that they should have dropped it into the incubator. After Max had learned of the investigation, it is reported that he had a \$1000.00 check returned to Coppertone. There was a flyer obtained that shows Frito-Lay was to donate \$500.00 but no confirmation on that check has been obtained. That information will follow since Tracey Battle is doing the follow-up.

- Max said that other vendors wanted to participate but that he had discouraged them doing that. Coppertone was his example of that investigation.

At the conclusion of the conversation with Max, he furnished a statement. On the morning of 7/15/09, I received a second statement from Max that he chose to supply.